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91ST CONGRESS }
2d Session }

SENATE

{ REPORT
No. 91-1062

WALTER L. PARKER

JULY 30, 1970.—Ordered to be printed

Mr. BURDICK, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 10662]

The Committee on the Judiciary, to which was referred the bill (H.R. 10662) for the relief of Walter L. Parker, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of the proposed legislation is to relieve Walter L. Parker of Trenton, N.J., of liability in the amount of \$279.05 for overpayments of salary paid to him from January 20, 1966 through October 31, 1967, during his active service as a member of the U.S. Marine Corps.

STATEMENT

The Department of the Navy supports enactment of the bill.

In its favorable report on the bill the Committee on the Judiciary of the House of Representatives said:

Walter L. Parker, while serving as a corporal in the Marine Corps, was seriously wounded in action in Vietnam in March of 1967. The wounds he suffered resulted in a physical disability which was rated at 50-percent disabling and, therefore, he was retired from the Marine Corps on November 1, 1967. In connection with his disability retirement, disbursing per-

sonnel in settling his final account made an error which resulted in an overpayment to him of \$279.05. As is noted in the departmental report, this single erroneous overpayment was based on a number of erroneous credits to Corporal Parker's account during his active service in the period mentioned in the bill. The error was later discovered during the course of a postseparation audit conducted in September 1968.

In its report to the committee, the Department of the Navy stated that its normal position is to oppose legislation relieving an individual of liability unless the indebtedness was occasioned through no fault of the service member and unless the overpayment was neither detectable nor could reasonably have been expected to have been detectable. The Navy found on the basis of its investigation that there is no indication in this case that the overpayment was the result of any fault or negligence on Corporal Parker's part. As is usual in cases of this kind, a number of balancings and adjustments were required in ascertaining the final payment due him at the time of his transfer to the retired list. Under these circumstances, the committee agrees with the Navy that it is understandable that Corporal Parker believed he was being accurately paid upon retirement. The Department of the Navy has further noted that a 90th Congress bill [Public Law 90-616] provides authority to the heads of executive agencies or the Comptroller General to waive payment of claims against Federal civilian employees who have been overpaid where the claim would be against equity and good conscience and not in the best interest of the United States. The Navy found that Corporal Parker's case would have been an apt subject for relief under that law were he a civilian employee rather than a serviceman.

The committee further observes that a wounded and disabled serviceman deserves additional consideration in view of his sacrifices in behalf of his country. It is recommended that the bill be considered favorably.

The committee believes the bill is meritorious and recommends it favorably.

Attached and made a part of the report are: (1) Letter, dated September 23, 1969, from the Department of the Navy; and (2) Letter, dated July 28, 1969, from the Comptroller General.

DEPARTMENT OF THE NAVY,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, D.C., September 23, 1969.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
House of Representatives,
Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to your letter of May 7, 1969, to the Secretary of the Navy requesting comment on H.R. 10662, a bill For the relief of Walter L. Parker.

This bill would relieve Cpl. Walter L. Parker, U.S. Marine Corps (retired) of liability to repay to the United States the amount of \$278.87, representing overpayments of salary during the period from January 20, 1966, through October 31, 1967, paid to him by the Department of the Navy as the result of an administrative error.

The records of this Department reveal that Corporal Parker was seriously wounded in action in Vietnam in March 1967. His wounds resulted in his retirement on November 1, 1967, for physical disability rated at 50-percent disabling. An error was made by disbursing personnel when settling Corporal Parker's final account, resulting in an overpayment to him of \$278.87. This single erroneous overpayment was based on a number of erroneous credits to Corporal Parker's account during the period mentioned in the bill. The overpayment was later discovered during the course of a postseparation audit conducted in September 1968.

The policy of the Department of the Navy is to oppose legislation designed to relieve an individual of his liability to the United States, unless the indebtedness was occasioned through no fault of the service member or employee and unless the overpayment was neither detectable nor could reasonably have been expected to have been detectable. There is no indication in this case that the overpayment was the result of any fault or negligence on the part of Corporal Parker. A number of balancings and adjustments were involved in the final payment to him at the time of his transfer to the retired list. It is considered reasonable to assume that Corporal Parker believed he was being accurately paid upon retirement.

Public Law 90-616 authorizes the head of an executive agency or the Comptroller General to waive payment of claims against Federal civilian employees who have been overpaid, where the claim would be against equity and good conscience and not in the best interests of the United States. The case of Corporal Parker would seem to be an analogous situation involving overpayment of military pay.

In view of the foregoing, the Department of the Navy supports enactment of H.R. 10662.

The Bureau of the Budget advises that, from the standpoint of the administration's program, there is no objection to the presentation of this report for the consideration of the committee.

For the Secretary of the Navy.

Sincerely yours,

JOHN D. H. KANE, Jr.,
Captain, U.S. Navy, Deputy Chief.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., July 28, 1969.

B-166897.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary.

DEAR MR. CHAIRMAN: Further reference is made to your letter dated May 7, 1969, requesting an expression of our views of H.R. 10662, a bill for the relief of Walter L. Parker.

The bill would relieve Mr. Parker of liability to the United States in the amount of \$278.87 representing "overpayments of salary" paid to him during the period from January 20, 1966, through October 31, 1967, by the Department of the Navy as a result of administrative error and through no fault of his own. The bill would relieve any certifying or disbursing officer of liability for the amount overpaid.

The record shows that Mr. Parker enlisted in the Marine Corps and reported for active duty January 20, 1966. As a result of injuries received while in Vietnam he was transferred to the U.S. Naval Hospital, St. Albans, N.Y., and attached for administrative purposes to the Marine Barracks, Brooklyn, N.Y., on or about March 26, 1967. On September 13, 1967, he was discharged from treatment and ordered to proceed to his home. He was relieved from active duty and transferred to the permanent disability retired list on October 31, 1967.

Subsequent to his transfer to the retired list Mr. Parker received five checks covering active duty pay and allowances which resulted in an overpayment of \$279.05. Collection letters were addressed to him requesting repayment of various amounts, however, by letter dated May 15, 1969, he was advised that collection action relative to the overpayment in the amount of \$279.05 is suspended until H.R. 10662 is passed or Congress is adjourned.

We do not view with favor legislation such as H.R. 10662 which would grant preferential treatment to an individual over other persons similarly situated who have been required to refund overpayments received because of administrative errors. See 5 U.S.C. 5514. On the record before us we find no special equity in this case which would warrant our recommending favorable consideration of the bill.

If H.R. 10662 is to receive favorable consideration, we suggest that the amount of the overpayment "\$278.87" be changed to read "\$279.05."

Sincerely yours,

R. F. KELLER

(For the Comptroller General of the United States).

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